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NATIONAL ASSOCIATION OF STATE AVIATION OFFICIALS

Metro Plaza One • Suite 505 • 8401 Colesville Road • Silver Spring, MD 20910

(301) 588-0587 • FAX: (301) 588-1288

FCC MAIL ROOM

November 26, 1997

FCC Docket No. 97-182
Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Sir or Madam:

The National Association of State Aviation Officials (NASAO) represents the men and women in state government aviation agencies, who serve the public interest in all 50 states, Guam and Puerto Rico. We appreciate the opportunity to provide reply comments on the FCC's notice of proposed rulemaking in the matter of *Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities*. As expressed in our enclosed comment letter dated October 27, 1997, this proposed NPRM would significantly threaten the states' efforts to preserve the safety of the flying public and, therefore, NASAO is vehemently opposed to its adoption.

In reviewing the 380 responses in the docket, we found that a majority of the commenters found it unacceptable for the FCC to propose preempt of state and local zoning regulations to meet the installation schedule that has been placed on the DTV industry. Comments in opposition to the preemption proposal were submitted by variety of interests across the United States, ranging from Alaska to Vermont to Hawaii, and included concerns from counties, cities, towns, planning districts, citizens associations, historical societies, local legislators, universities, environmental groups, and private citizens, as well as federal agencies such as the Department of Interior. The Office of Aircraft Sales in the Department of Interior noted that the NPRM "would certainly not be in the interest of aviation safety to those operations where towers could be installed without approval from those who utilize airspace for transportation."

Negative comments also were submitted from all aspects of the aviation community across the country - states, airport owners, pilots, aircraft manufacturers, airport managers, fixed base operators, and various associations representing these interests. Over 25 state aviation agencies provided letters in opposition to the rule explaining that the safety of our national aviation system is of paramount concern to them and that adoption of this proposal is contrary to the fundamental principles of aviation safety. Many in the aviation industry

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File of Comment and
List of Commenters

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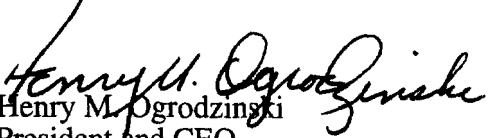
noted that this proposed rule could result in the creation of hazards to aircraft and passengers at airports across the U.S., as well as jeopardize the safety of persons and objects on the ground. States and airport owners, as well as users of the aviation system, expressed concerns that the unregulated construction of these towers will also contribute to the degradation of the capacity and accessibility of our nation's system of airports.

Of course, supporting comments for the preemption proposal came from the broadcast industry, with comments that "urge the Commission to preempt all State, County, and City laws and regulations, so that once the Commission has determined that the public interest will be served by a broadcast facility, that determination will not be defeated by local authorities." The FCC manages the telecommunications industry and does not have the expertise necessary to make decisions that affect our nation's aviation safety. Because of FAA's limited regulatory authority under Federal Aviation Regulations Part 77, the duty of controlling towers that interfere with airport operations and capacity has become the responsibility of states and municipalities. In many instances, state and local zoning laws are the only means to protect the navigable airspace around an airport from the construction of potential hazards, therefore, keeping an unsafe operational condition from occurring.

Another comment supporting the broadcast industry's position on the preemption noted that the NPRM "strikes a balance between implementing national broadcast policy and accommodating local land use, zoning, and safety interests." States, FAA, and airports have worked long and hard to put tall structures and zoning regulations in place to protect airports and public safety and preemption of these regulations by the FCC with the implementation of this proposed rule does not constitute "striking a balance." NASAO and its member the state aviation agencies do not support the concept of "preemption" of the zoning rules but support the need for continued cooperation between federal, state, and local government agencies to solve these types of problems that may occur during the installation of broadcast tower facilities.

Once again, thank you for the opportunity to provide reply comment prior to the implementation of this potentially devastating NPRM and please feel free to call me or NASAO Vice President Lori Lehnerd on (301) 588-0587 if you have any questions about our concerns.

Sincerely,


Henry M. Ogrodzinski
President and CEO

Enclosure

cc: DOT Secretary Slater
FAA Administrator Garvey

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October 27, 1997

FCC Docket No. 97-182
Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Sir or Madam:

Founded 67 years ago, the National Association of State Aviation Officials (NASAO) represents the men and women in state government aviation agencies, who serve the public interest in all 50 states, Guam and Puerto Rico. These highly skilled professionals are full partners with the federal government in the development and maintenance of the safest and most efficient aviation system in the world. The notice of proposed rulemaking by the Federal Communications Commission in the matter of *Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities* would significantly threaten the states' efforts to preserve the safety of the flying public and, therefore, NASAO is vehemently opposed to its adoption.

The safety of our national aviation system is of paramount concern to the state aviation agencies across the country and adoption of this rule is contrary to the most fundamental principles of aviation safety. This proposed rule could result in the creation of hazards to aircraft and passengers at airports across the United States, as well as jeopardize the safety of persons and objects on the ground.

The proliferation of tall towers in recent years has already permitted encroachment on the navigable airspace in our nation, thus restricting the approach and departure paths at public airports. This rule proposes to preempt the state and local zoning regulations which limit the erection of additional towers that are hazards to air navigation, further impacting the safety of the flight operations at existing airport facilities. These operations include not only passenger and cargo aircraft, but involve the important use of the aviation system to assist our citizens during medical emergencies. The construction of these towers will also contribute to the degradation of the capacity and accessibility of our nation's system of airports.

The primary mission of the Federal Aviation Administration (FAA) is aviation safety. On the other hand, the Federal Communications Commission manages the telecommunications industry and does not have the expertise necessary to

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make decisions that affect our nation's aviation safety. Yet Paragraph II.7 of this rulemaking would allow the FCC to determine whether a request for the construction of a broadcast facility would "comply with applicable tower lighting, painting and marking regulations or policies." It is unacceptable that a commission which oversees telecommunications proposes to take over the FAA's responsibility of obstruction evaluation.

Currently, Federal Aviation Regulation (FAR) Part 77 allows the FAA to determine the impact of a proposed tower facility on air navigation, however, it does not provide the FAA with the regulatory authority to protect airports from the construction of such structures that would interfere with the safe or efficient use of the aviation system across the nation. With the FAA's limited regulatory authority under FAR Part 77, the duty of controlling towers that interfere with airport operations and capacity has become the responsibility of states and municipalities. State aviation agencies and local governments are experienced with aeronautical activities and are knowledgeable on airport issues. In many cases, state and local zoning laws are the only means to protect the navigable airspace around an airport from the construction of potential hazards, therefore, keeping an unsafe operational condition from occurring.

Because FAA does not have the enforcement authority, the Ohio Legislature passed the Ohio Airport Protection Act in 1991. The Ohio Airport Protection Act "prohibits the installation of any structure or object of natural growth which will penetrate into navigable airspace, as defined by Federal Aviation Regulation Part 77, without obtaining a permit from the Ohio Department of Transportation." The Act promotes the safety of air transportation by ensuring that telecommunications towers and other structures are not obstacles to air navigation. If the proposed structure is determined to be an obstacle to air navigation, the Ohio Department of Transportation can require that the structure be lighted and marked or prohibit construction. The Department has been successful in working with permit applicants to use a combination of marking, lighting, and re-location of structures so they do not pose a threat to aviation safety. With this law in place, the Ohio Aviation Telecommunications Power Coordination Committee has been successful in protecting airports and promoting compatibility between communications towers, power transmission facilities, and airports.

The New Hampshire Legislature "found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in the vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety, or general welfare." In this effort, the state of New Hampshire requires that municipalities with public airports adopt zoning to control obstructions as defined in FAR Part 77.

In the State of Idaho, Code 21-513 through 21-520 are more restrictive than the FAA and where the FAA determines that an obstruction "should be marked and lighted", the State of Idaho "requires the marking and/or lighting" based on a

study of local flying conditions.

Overall, the states invest about \$450 million annually in planning, infrastructure development, maintenance, and navigational aids at 6,000 airports across the country. Many states also build, own, and operate their own airports. The purpose of the existing zoning regulations is to preserve the safe, efficient use of the states' aviation system and to protect the substantial investment of federal, state, and local public funds. Today, over 30 states across the country have tall structures zoning in place. The lack of adequate state and local zoning places an existing airport in danger of encroachment by tower development and puts unnecessary constraints on the expansion of airports to meet the future aviation user needs.

The FAA requires airport sponsors which accept federal dollars under the Airport Improvement Program (AIP) to prevent the construction of obstructions in aerial approaches of airports. Preemption of these existing zoning regulations could place a state or local airport sponsor in default of its grant assurance under AIP. To help with the development of these types of zoning regulations, the FAA has developed Advisory Circular 150/5190-4A, *A Model Zoning Ordinance to Limit Height of Objects Around Airports*.

The Florida Legislature and its Department of Transportation have long recognized that a viable system of public aviation facilities and the airspace necessary to efficiently operate them is of vital importance to the state's economy. In the past five years, the State of Florida alone has invested about \$430 million of its own funds to preserve and expand the state's aviation system. In protecting its investment, the Florida Legislature enacted comprehensive land use planning and aviation compatible land use legislation that requires controls for structure heights and land uses that are incompatible with normal aviation operations or that jeopardize the health, safety or welfare of the public. The responsibility for the successful enforcement of this legislation is shared by the state's Department of Transportation and the local governments.

Many state and local planning agencies are required by law to provide a specific time period for the public to have an opportunity to comment and to allow for a public hearing to be conducted on a tower proposal. These comment periods are a vital part of the review process, affording the local community, as well as the aviation public, an opportunity to comment on a proposal that may have a detrimental effect on the operations of their airport or the safety of the local community on the ground. In many cases across the country, the review periods proposed in this rulemaking do not allow for an adequate opportunity for public review and comment and does not constitute enough time to investigate all the safety implications of the proposed tower construction.


NASAO is also concerned that this rule will be expanded to include telecommunications equipment other than DTV towers. Imposition of this type of rule would give leverage to the various other members of the telecommunications industry to suggest preemption of state and local zoning rules for the installation of their equipment, as well.

States, FAA, and airports have worked long and hard to put tall structures and zoning regulations in place to protect airports and public safety. Preemption of

these regulations by the FCC, with the approval of this proposed rule, would be devastating. It is unacceptable for the FCC to propose preemption of these zoning rules to meet the installation schedule that has been placed on the DTV industry. The state aviation agencies do not support the concept of "preemption of the rules" but support the need for continued cooperation between federal, state, and local government agencies, as in the case of the Ohio Aviation Telecommunications Power Coordination Committee, to solve these types of problems.

Thank you for the opportunity to comment on this proposed rulemaking and please call me or NASAO Vice President Lori Lehnerd on (301) 588-0587 if you have any questions about NASAO's concerns.

Sincerely,


Henry M. Ogrodzinski
President and CEO

cc: DOT Secretary Slater
FAA Administrator Garvey